

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

GLENN M. KOOGLER

(VPDES Permit No. VA0068454)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Section 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Glenn M. Koogler for the purposes of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizen’s board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.

4. “Director” means the Director of DEQ.
5. “Regional Office” means the Valley Regional Office of DEQ.
6. “Order” means this document, also known as a Consent Special Order.
7. “Permit Regulation” means 9 VAC 25-31-10 *et seq.*
8. “Koogler” means Glenn M. Koogler who owns and operates the Koogler Sewage Treatment Plant.
9. “Permit” means Virginia Pollutant Discharge Elimination System Permit No. VA0068454, which was issued December 12, 1999, and which expires December 12, 2004.
10. “Plant” or “Facility” means the Koogler sewage treatment plant.
11. “DMR” means Discharge Monitoring Report.
12. “VDH” means the Virginia Department of Health/Lexington Field Office.
13. “P.E.R.” means the Preliminary Engineering Report.
14. “1999 Order” means the Consent Special Order which became effective June 21, 1999.
15. “STP” means sewage treatment plant.
16. “RFP” means request for proposal.

SECTION C: Findings of Facts and Conclusions of Law

1. Koogler owns and operates a wastewater treatment plant serving the Raphine Limited Partnership Motel, the Raphine Wilco and Raphine Texaco service stations, a restaurant, and a trailer park in Rockbridge County, Virginia, which is the subject of VPDES Permit No. VA0068454. The Facility discharges treated wastewater to Moores Creek in the Upper James River basin.
2. On June 21, 1999, Koogler (previously Raphine Limited Partnership Motel) entered into a Consent Special Order to address reporting violations and the failure to meet final effluent limitations contained in the Permit. The 1999 Order contained a schedule to return the Facility

to compliance with the Permit's final effluent limitations.

3. The 1999 Order required Koogler to submit plans and specifications for Plant upgrades to ensure compliance with the Permit or, as an alternative, to obtain from Rockbridge County a written, formalized plan and schedule of corrective actions to ensure that the Plant would consistently comply with final effluent limitations in a timely manner.
4. On December 17, 1999, DEQ received from Rockbridge County a plan to construct a sewage treatment plant to serve Koogler's properties and a portion of the surrounding area. This plan projected a completion date of December 12, 2002, for the proposed STP. The County indicated it had no interim plans to operate or take ownership of the Koogler Plant. As structured, this plan did not ensure that the Koogler Plant would consistently comply with final effluent limitations until such time as it was taken offline to the County STP.
5. By letter dated June 28, 2000, DEQ requested that Koogler submit to DEQ and VDH plans and specifications for Plant upgrades to improve the Plant's performance until such time as the Plant could be taken offline to a Rockbridge County plant. This request was based on continuing ammonia effluent limitation exceedances.
6. On August 30, 2000, Koogler, via Blackwell Engineering, submitted to DEQ a proposed interim plan of corrective actions to improve the Koogler Plant's performance until such time as it could be taken offline to a Rockbridge County plant.
7. On October 17, 2000, DEQ issued VPDES Permit number VA0090450 to Rockbridge County Public Service Authority for the Raphine WWTP. This Permit was obtained as part of the County's December 17, 1999, plan to construct an STP to serve Koogler which was submitted to DEQ in accordance with the 1999 Order.
8. Subsequent to October 17, 2000, Rockbridge County altered its plans and decided not to pursue construction of the Raphine WWTP.
9. By letter dated January 25, 2001, VDH rejected Blackwell Engineering's proposed plan of corrective actions for the Koogler Facility.
10. DEQ issued Notice of Violation No. 2001-11-V-006 on November 16, 2001, to Koogler for apparent violations of ammonia effluent limits occurring during the period January 2001 through August 2001.
11. In addition, the Facility experienced further apparent ammonia Permit effluent limitation violations during the period February, March, July, August, November and December 2000 which were not cited in an NOV.

12. By letter dated November 23, 2001, Koogler submitted to DEQ a new proposed plan and schedule of corrective actions to return the Facility to compliance. This plan and schedule was in response to the November 16, 2001 NOV and was intended for inclusion into a new Consent Order.
13. DEQ issued Notice of Violation No. 2002-01-V-007 on February 6, 2002, to Koogler for apparent violations of ammonia effluent limits occurring during December 2001.
14. DEQ issued Notice of Violation No. 2003-02-V-0002 on March 6, 2003, to Koogler for the apparent ammonia Permit effluent limitation violations which occurred March, November and December 2002, and January 2003 and TRC Permit effluent limitations which occurred March 2002, November 2002, and January 2003. In addition, the NOV cited a TRC in-stream water quality standard violation occurring in January 2003.
15. In addition to the effluent violations cited in the NOVs, Facility experienced apparent fecal coliform Permit effluent limitation violations in August 2002 and December 2002 and apparent ammonia violations in January 2002 that were not cited in any enforcement notice. The Facility also experienced 8 additional apparent ammonia Permit effluent limitation violations which occurred April 2003 through July 2003, which were not cited in an NOV.
16. Presently, Rockbridge County is reviewing the options for extending its regional sewage collection system to the Raphine area. If this option is selected and developed, the Koogler STP would be taken offline.
17. On August 18, 2003, DEQ met in an informal settlement conference to discuss the February 6, 2003 and March 6, 2003, NOVs and resolution of the violations. The August 18, 2003, meeting included discussions of the Plant operations and the County's proposal for constructing a sewage collection system to provide service to the Raphine Area.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority of Va. Code §62.1-44.15(8a) and (8d), orders Koogler and Koogler agrees that:

1. To remedy the violations described above and bring the Facility into compliance, Koogler shall perform the actions described in Appendix A and Appendix B to the Order.
2. Within **30 days** of the effective date of this Order, Koogler shall pay a civil charge of **\$7,500** in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Koogler shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

3. During the estimated three and one half years= interim during which Facility improvements will be completed or the Facility is taken offline, the Koogler will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.
4. This Order cancels and supersedes the 1999 Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Koogler, for good cause shown by Koogler, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; or (2) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Koogler admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Koogler consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Koogler declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Koogler to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Koogler shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Koogler must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Koogler shall notify the Director of the Valley Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition listed above, which Koogler intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Koogler. Notwithstanding the foregoing, Koogler agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Koogler. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Koogler from his obligation to comply with any statute, regulation, permit condition, other order, certificate, standard or requirement otherwise applicable.

12. By his signature below, Koogler voluntarily agrees to the issuance of this Order.

And it is SO ORDERED this _____ day of _____, 200 ____.

Robert G. Burnley, Director
Department of Environmental Quality

Koogler voluntarily agrees to the issuance of this Order.

Date: _____ By: _____

Glenn M. Koogler

State of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this

_____ day of _____, 2003, by Glenn M. Koogler

Notary Public

My Commission expires: _____

**APPENDIX A
SCHEDULE OF COMPLIANCE
KOOGLER STP**

1. **By December 15, 2003**, the Facility's licensed operator in primary charge of the day to day operations and maintenance shall begin taking the Facility's BOD, TSS, and ammonia effluent samples for the month. Koogler shall have, at minimum, a licensed Class IV operator in primary responsible charge of the day to day operations and maintenance of the Facility and ensure that a staff of one or more operators are trained to operate and maintain the Facility in compliance with the Permit.
2. **Not later than December 31, 2006**, Koogler shall come into compliance with the Permit, State Water Control Law and the Regulation by either:
 - a. Connecting the Facility to public sewer and thereby eliminating all discharges from the Facility.
 - b. Installing an on-site disposal system approved by the local Department of Health and closing the Facility, thereby eliminating all discharges from the Facility.
 - c. Upgrading the Facility to meet the Permit's final effluent limitations.
3. **Not later than September 1, 2004**, Koogler shall submit to DEQ, for review and approval, an approvable plan and schedule for coming into compliance with the Permit and the State Water Control Law and the Regulation by **December 31, 2006**. Such plan shall specify one of the options listed in Paragraph 2 as the method chosen to comply. Koogler shall respond to any comments from DEQ on said compliance plan **with 30 days** of receipt. Upon its approval by DEQ said plan and schedule shall become a part of and enforceable under the terms of this order.
4. If Koogler chooses the option 2.a. or 2.b. above, Koogler shall submit to DEQ, for review and approval, a complete closure plan for the Facility not later than **December 31, 2005**. The closure plan shall include a plan of action and schedule. Koogler shall comply with the approved closure plan. Upon its approval by DEQ, said plan and schedule shall become an enforceable

part of this order. Koogler shall respond to any comments from DEQ regarding the closure plan **within 30 days** of receipt.

5. If Koogler chooses option 2.c above, then not later than **June 15, 2004**, Koogler shall submit to DEQ a complete and approvable Permit application for reissuance of the Permit.
6. Koogler shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2003**. Subsequent Progress Reports will be due by **January 10, April 10 July 10, and October 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The quarterly progress reports shall contain:
 - a. a summary of all work completed since the previous progress report in accordance with this Order.
 - b. a projection of the work to be completed during the upcoming quarter in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.
7. No later than **14 days** following a date identified in the above schedule of compliance Koogler shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the date of entry of this Consent Special Order and lasting until **not later December 31, 2006**, Koogler is authorized to discharge from outfall 001.

Such discharges shall be limited and monitored by Koogler as specified below:

<u>EFFLUENT CHARACTERISTICS</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>		<u>Weekly Average</u>		<u>Instantaneous Limitation</u>		<u>Frequency</u>	<u>Sample Type</u>
	mg/l	kg/d	mg/l	kg/d	<u>Min.</u>	<u>Max.</u>		
Ammonia (Jan-May)	27.6	NA	27.6	NL	NA	NA	1/W	grab
Ammonia (Jun-Dec)	18.3	NA	18.3	NL	NA	NA	1/W	grab

NL = No Limit

NA= Not applicable